

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

Claims 1-3, 5-9, 11-14, 16-20, 22 and 23 were pending at the time the outstanding Office Action was issued by the Examiner. Of these, Claims 1, 12 and 23 are independent claims, the remaining claims are dependent. Applicants have amended Claims 1-3, 5-9, 11-14, 16-20, 22 and 23 and canceled Claims 4, 10, 15, and 21 from further consideration in this application.

Applicants are not conceding in this application that the claims amended and cancelled herein are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Objections to the Specification

The specification stands objected to because of various informalities. In response, Applicants have submitted the above-designated replacement paragraphs in order to overcome these objections. Therefore, Applicants respectfully request that the objections to the specification be reconsidered and withdrawn.

Objections to the Claims

Claims 1-3, 5-9, 11-14, 16-20, 22 and 23 stand objected to because of various informalities. In response, Applicants have amended these claims to adopt the suggestions made by the Examiner to ensure sufficient antecedent basis. Therefore, Applicants respectfully request the objections to the claims be reconsidered and withdrawn.

Claim Rejections under 35 U.S.C. 101

Claims 1-3, 5-9 and 11 stand rejected under 35 U.S.C. 101 as being directed towards non-statutory subject matter. Solely in an effort to expedite prosecution, Applicants have amended Claim 1 to recite, *inter alia*, “[a] system comprised of a computer processor configured for executing a computer program stored in computer memory so as to regulate resource consumption in a computer system used for utility work and production work....” Applicants respectfully submit that this language clearly renders the claims directed towards statutory subject matter. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw these rejections of the claims.

Claim Rejections Based on Prior Art

Claims 1-3, 5, 9, 11-14, 16, 20, 22 and 23 stand rejected under 35 U.S.C. 102(e) as being anticipated by Beghtel (U.S. Patent Application No. 2003/0088605). Claims 6-8 and 17-19 stand rejected under 35 U.S.C. 103(a) as being obvious in light of Beghtel in combination with Douceur et al. (U.S. Patent No. 6,834,386). Applicants reiterate (and

incorporate by reference) the arguments made with respect to Douceur in response to the previous Office Action, and for the following additional reasons respectfully request reconsideration and withdrawal of these rejections.

All of the pending claims as amended herein now depend from (and thus incorporate the subject matter of) Claims 1, 12 and 23 to require “*optionally inserting the derived throttling level at a selected point during execution of the at least one utility ...wherein the derived throttling level is implemented within the at least one utility*”. (See, e.g., Specification at page 19, line 17 - page 20, line 15. See also e.g., FIGS.7, 8 and 11.) These claimed features are not taught or suggested by Beghtel either alone or in combination with Douceur (or any other cited reference).

In view of the foregoing, it is respectfully submitted that independent Claims 1, 12 and 23 fully distinguish over the applied art and are thus allowable. By virtue of dependence from Claims 1, 12 and 23, it is thus also submitted that Claims 2, 3, 5-9, 11, 13, 14, 16-20 and 22 are also allowable at this juncture.

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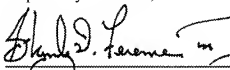
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In summary, it is respectfully submitted that the instant application, including Claims 1-3, 5-9, 11-14, 16-20, 22 and 23, is presently in condition for allowance. Notice to that effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stanley D. Ference III", is written over a horizontal line.

Stanley D. Ference III
Registration No. 33,879

Customer Number 35195
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants